

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 4931, AS REPORTED  
OFFERED BY MR. MATSUI OF CALIFORNIA**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Retirement Savings  
3 Security Act of 2002”.

**4 TITLE I—PENSION PLAN  
5 PROVISIONS**

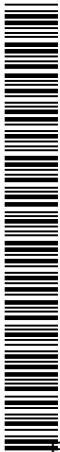
**6 SEC. 101. PENSIONS AND INDIVIDUAL RETIREMENT AR-  
7 RANGEMENT PROVISIONS MADE PERMA-  
8 NENT.**

9       (a) IN GENERAL.—Section 901 of the Economic  
10 Growth and Tax Relief Reconciliation Act of 2001 is  
11 amended by adding at the end the following new sub-  
12 section:

13       “(c) EXCEPTION.—Subsections (a) and (b) shall not  
14 apply to the provisions of, and amendments made by, sub-  
15 titles (A) through (F) of title VI (relating to pension and  
16 individual retirement arrangement provisions).”.

17       (b) CONFORMING AMENDMENTS.—Section 901(b) of  
18 such Act is amended—

19               (1) by striking “and the Employee Retirement  
20 Income Security Act of 1974” in the text, and



1 (2) by striking “OF CERTAIN LAWS” in the  
2 heading.

3 **SEC. 102. CREDIT FOR RETIREMENT SAVINGS OF CERTAIN**  
4 **INDIVIDUALS MADE PERMANENT.**

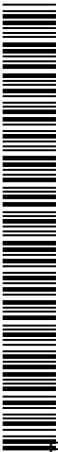
5 Section 25B of the Internal Revenue Code of 1986  
6 (relating to elective deferrals and IRA contributions of  
7 certain individuals) is amended by striking subsection (h).

8 **SEC. 103. INCREASED COMPENSATION LIMIT NOT TO RE-**  
9 **SULT IN REDUCED BENEFITS FOR THE NON-**  
10 **HIGHLY COMPENSATED.**

11 (a) IN GENERAL.—Paragraph (17) of section 401(a)  
12 of the Internal Revenue Code of 1986 is amended by add-  
13 ing at the end the following new subparagraph:

14 “(C) BENEFITS MAY NOT DECREASE.—  
15 Subparagraphs (A) and (B) shall be applied by  
16 substituting ‘\$150,000’ for ‘\$200,000’ with re-  
17 spect to a plan for any year if any employee’s  
18 benefit under the plan would decrease were the  
19 \$200,000 amount used by the plan instead of  
20 the \$150,000 amount.”

21 (b) DEDUCTION LIMITATION.—Subsection (l) of sec-  
22 tion 404 of such Code is amended by adding at the end  
23 the following new sentence: “The preceding sentences of  
24 this subsection shall be applied by substituting ‘\$150,000’  
25 for ‘\$200,000’ with respect to a plan for any year if any



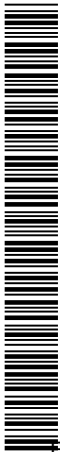
1 employee's benefit under the plan would decrease were the  
2 \$200,000 amount used by the plan instead of the  
3 \$150,000 amount."

4 (c) SIMPLIFIED EMPLOYEE PENSIONS.—Subsection  
5 (k) of section 408 of such Code is amended by redesignig-  
6 nating paragraph (9) as paragraph (10) and by inserting  
7 after paragraph (8) the following new paragraph:

8 "(9) LOWER COMPENSATION LIMITATION IF  
9 BENEFITS DECREASE.—Paragraphs (3)(C) and  
10 (6)(D) shall be applied by substituting '\$150,000'  
11 for '\$200,000' with respect to a plan for any year  
12 if any employee's benefit under the plan would de-  
13 crease were the \$200,000 amount used by the plan  
14 instead of the \$150,000 amount."

15 (d) CERTAIN TAX-EXEMPT ORGANIZATIONS.—Para-  
16 graph (7) of section 505(b) of such Code is amended by  
17 adding at the end the following new sentence: "The pre-  
18 ceding sentences of this subsection shall be applied by sub-  
19 stituting '\$150,000' for '\$200,000' with respect to a plan  
20 for any year if any employee's benefit under the plan  
21 would decrease were the \$200,000 amount used by the  
22 plan instead of the \$150,000 amount."

23 (e) EFFECTIVE DATE.—The amendments made by  
24 this section shall apply to years beginning after the date  
25 of the enactment of this Act.



1 **SEC. 104. MATCHING CONTRIBUTIONS NOT TAKEN INTO AC-**  
2 **COUNT FOR MINIMUM CONTRIBUTION RE-**  
3 **QUIREMENTS UNDER TOP-HEAVY PLAN**  
4 **RULES.**

5 (a) IN GENERAL.—Subparagraph (A) of section  
6 416(c)(2) of the Internal Revenue Code of 1986 is amend-  
7 ed by striking the last sentence.

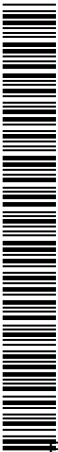
8 (b) EFFECTIVE DATE.—The amendment made by  
9 this section shall apply to years beginning after the date  
10 of the enactment of this Act.

11 **TITLE II—RESPONSIBLE**  
12 **CORPORATE GOVERNANCE**

13 **SEC. 201. PERFORMANCE-BASED COMPENSATION EXCEP-**  
14 **TION TO \$1,000,000 LIMITATION ON DEDUCT-**  
15 **IBLE COMPENSATION NOT TO APPLY IN CER-**  
16 **TAIN CASES.**

17 (a) IN GENERAL.—Paragraph (4) of section 162(m)  
18 of the Internal Revenue Code of 1986 is amended by add-  
19 ing at the end the following new subparagraph:

20 “(G) CERTAIN FACTORS NOT PERMITTED  
21 TO BE TAKEN INTO ACCOUNT IN DETERMINING  
22 WHETHER PERFORMANCE GOALS ARE MET.—  
23 Subparagraph (C) shall not apply if, in deter-  
24 mining whether the performance goals are met,  
25 any of the following are taken into account:



1 “(i) Cost savings as a result of  
2 changes to any qualified employer plan (as  
3 defined in section 4972(d)).

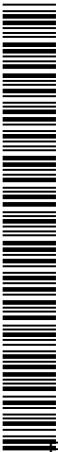
4 “(ii) Excess assets of such a plan or  
5 earnings thereon.

6 “(iii) Any excess of the amount as-  
7 sumed to be the return on the assets of  
8 such a plan over the actual return on such  
9 assets.”

10 (b) EFFECTIVE DATE.—The amendment made by  
11 this section shall apply to taxable years beginning after  
12 the date of the enactment of this Act.

13 **SEC. 202. INCLUSION IN GROSS INCOME OF FUNDED DE-**  
14 **FERRED COMPENSATION OF CORPORATE IN-**  
15 **SIDERS IF CORPORATION FUNDS DEFINED**  
16 **CONTRIBUTION PLAN WITH EMPLOYER**  
17 **STOCK.**

18 (a) IN GENERAL.—Subpart A of part I of subchapter  
19 D of chapter 1 of the Internal Revenue Code of 1986 is  
20 amended by adding at the end the following new section:



1 **“SEC. 409A. DENIAL OF DEFERRAL FOR FUNDED DEFERRED**  
2 **COMPENSATION OF CORPORATE INSIDERS IF**  
3 **CORPORATION FUNDS DEFINED CONTRIBU-**  
4 **TION PLAN WITH EMPLOYER STOCK.**

5 “(a) IN GENERAL.—If an employer maintains a de-  
6 fined contribution plan to which employer contributions  
7 are made in the form of employer stock and such employer  
8 maintains a funded deferred compensation plan—

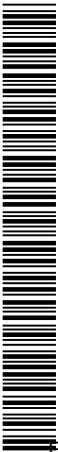
9 “(1) compensation of any corporate insider  
10 which is deferred under such funded deferred com-  
11 pensation plan shall be included in the gross income  
12 of the insider or beneficiary for the 1st taxable year  
13 in which there is no substantial risk of forfeiture of  
14 the rights to such compensation, and

15 “(2) the tax treatment of any amount made  
16 available under the plan to a corporate insider or  
17 beneficiary shall be determined under section 72 (re-  
18 lating to annuities, etc.).

19 “(b) FUNDED DEFERRED COMPENSATION PLAN.—  
20 For purposes of this section—

21 “(1) IN GENERAL.—The term ‘funded deferred  
22 compensation plan’ means any plan providing for the  
23 deferral of compensation unless—

24 “(A) the employee’s rights to the com-  
25 pensation deferred under the plan are no great-



1 er than the rights of a general creditor of the  
2 employer, and

3 “(B) all amounts set aside (directly or in-  
4 directly) for purposes of paying the deferred  
5 compensation, and all income attributable to  
6 such amounts, remain (until made available to  
7 the participant or other beneficiary) solely the  
8 property of the employer (without being re-  
9 stricted to the provision of benefits under the  
10 plan), and

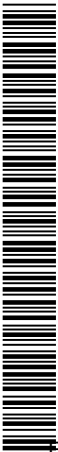
11 “(C) the amounts referred to in subpara-  
12 graph (B) are available to satisfy the claims of  
13 the employer’s general creditors at all times  
14 (not merely after bankruptcy or insolvency).

15 Such term shall not include a qualified employer  
16 plan.

17 “(2) SPECIAL RULES.—

18 “(A) EMPLOYEE’S RIGHTS.—A plan shall  
19 be treated as failing to meet the requirements  
20 of paragraph (1)(A) unless—

21 “(i) the compensation deferred under  
22 the plan is paid only upon separation from  
23 service, death, or at a specified time (or  
24 pursuant to a fixed schedule), and



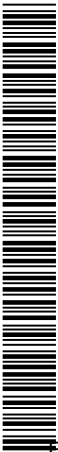
1           “(ii) the plan does not permit the ac-  
2           celeration of the time such deferred com-  
3           pensation is paid by reason of any event.

4           If the employer and employee agree to a modi-  
5           fication of the plan that accelerates the time for  
6           payment of any deferred compensation, then all  
7           compensation previously deferred under the  
8           plan shall be includible in gross income for the  
9           taxable year during which such modification  
10          takes effect and the taxpayer shall pay interest  
11          at the underpayment rate on the underpay-  
12          ments that would have occurred had the de-  
13          ferred compensation been includible in gross in-  
14          come when deferred.

15          “(B) CREDITOR’S RIGHTS.—A plan shall  
16          be treated as failing to meet the requirements  
17          of paragraph (1)(B) with respect to amounts  
18          set aside in a trust unless—

19                 “(i) the employee has no beneficial in-  
20                 terest in the trust,

21                 “(ii) assets in the trust are available  
22                 to satisfy claims of general creditors at all  
23                 times (not merely after bankruptcy or in-  
24                 solvency), and





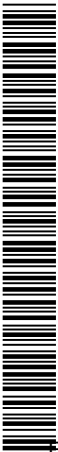
1           “(iii) there is no factor (such as the  
2           location of the trust outside the United  
3           States) that would make it more difficult  
4           for general creditors to reach the assets in  
5           the trust than it would be if the trust as-  
6           sets were held directly by the employer in  
7           the United States.

8           “(c) CORPORATE INSIDER.—For purposes of this sec-  
9           tion, the term ‘corporate insider’ means, with respect to  
10          a corporation, any individual who is subject to the require-  
11          ments of section 16(a) of the Securities Exchange Act of  
12          1934 with respect to such corporation.

13          “(d) OTHER DEFINITIONS.—For purposes of this  
14          section—

15               “(1) PLAN INCLUDES ARRANGEMENTS, ETC.—  
16          The term ‘plan’ includes any agreement or arrange-  
17          ment.

18               “(2) SUBSTANTIAL RISK OF FORFEITURE.—The  
19          rights of a person to compensation are subject to a  
20          substantial risk of forfeiture if such person’s rights  
21          to such compensation are conditioned upon the fu-  
22          ture performance of substantial services by any indi-  
23          vidual.”



1 (b) CLERICAL AMENDMENT.—The table of sections  
2 for such subpart A is amended by adding at the end the  
3 following new item:

“Sec. 409A. Denial of deferral for funded deferred compensation  
of corporate insiders if corporation funds defined  
contribution plan with employer stock.”

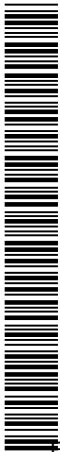
4 (b) EFFECTIVE DATE.—The amendments made by  
5 this section shall apply to amounts deferred after the date  
6 of the enactment of this Act.

7 **SEC. 203. INCLUSION IN INCOME OF CERTAIN DEFERRED**  
8 **AMOUNTS OF INSIDERS OF CORPORATIONS**  
9 **WHICH EXPATRIATE TO AVOID UNITED**  
10 **STATES INCOME TAX.**

11 (a) IN GENERAL.—Part II of subchapter B of chap-  
12 ter 1 of the Internal Revenue Code of 1986 (relating to  
13 items specifically included in gross income) is amended by  
14 adding at the end the following new section:

15 **“SEC. 91. UNREALIZED GAIN ON STOCK OPTIONS OF INSID-**  
16 **ERS OF CORPORATIONS WHICH EXPATRIATE**  
17 **TO AVOID UNITED STATES INCOME TAX.**

18 “(a) IN GENERAL.—In the case of a corporate insider  
19 of any expatriate corporation, the gross income of such  
20 insider (for the taxable year during which such corpora-  
21 tion becomes an expatriate corporation) shall include as  
22 ordinary income the net unrealized built-in gain on options  
23 held by such insider to acquire stock in such corporation  
24 or in any member of the expanded affiliated group which



1 includes such corporation. Proper adjustments shall be  
2 made in the amount of any gain or loss subsequently real-  
3 ized with respect to such options for any amount included  
4 in gross income under the preceding sentence.

5 “(b) DEFINITIONS.—For purposes of this section—

6 “(1) CORPORATE INSIDER.—The term ‘cor-  
7 porate insider’ means, with respect to a corporation,  
8 any individual who is subject to the requirements of  
9 section 16(a) of the Securities Exchange Act of  
10 1934 with respect to such corporation.

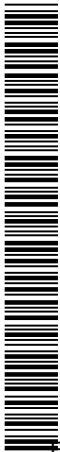
11 “(2) EXPATRIATE CORPORATION.—

12 “(A) IN GENERAL.—The term ‘expatriate  
13 corporation’ means the acquiring corporation in  
14 a corporate expatriation transaction.

15 “(B) CORPORATE EXPATRIATION TRANS-  
16 ACTION.—For purposes of this paragraph—

17 “(i) IN GENERAL.—The term ‘cor-  
18 porate expatriation transaction’ means any  
19 transaction if—

20 “(I) a nominally foreign corpora-  
21 tion (referred to in this subparagraph  
22 as the ‘acquiring corporation’) ac-  
23 quires, as a result of such transaction,  
24 directly or indirectly substantially all



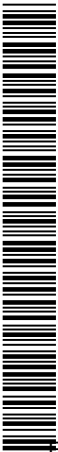
1 of the properties held directly or indi-  
2 rectly by a domestic corporation, and

3 “(II) immediately after the trans-  
4 action, more than 80 percent of the  
5 stock (by vote or value) of the acquir-  
6 ing corporation is held by former  
7 shareholders of the domestic corpora-  
8 tion by reason of holding stock in the  
9 domestic corporation.

10 “(ii) LOWER STOCK OWNERSHIP RE-  
11 QUIREMENT IN CERTAIN CASES.—Sub-  
12 clause (II) of clause (i) shall be applied by  
13 substituting ‘50 percent’ for ‘80 percent’  
14 with respect to any nominally foreign cor-  
15 poration if—

16 “(I) such corporation does not  
17 have substantial business activities  
18 (when compared to the total business  
19 activities of the expanded affiliated  
20 group) in the foreign country in which  
21 or under the law of which the corpora-  
22 tion is created or organized, and

23 “(II) the stock of the corporation  
24 is publicly traded and the principal



1 market for the public trading of such  
2 stock is in the United States.

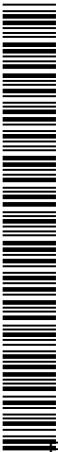
3 “(iii) PARTNERSHIP TRANSACTIONS.—

4 The term ‘corporate expatriation trans-  
5 action’ includes any transaction if—

6 “(I) a nominally foreign corpora-  
7 tion (referred to in this paragraph as  
8 the ‘acquiring corporation’) acquires,  
9 as a result of such transaction, di-  
10 rectly or indirectly properties consti-  
11 tuting a trade or business of a domes-  
12 tic partnership,

13 “(II) immediately after the trans-  
14 action, more than 80 percent of the  
15 stock (by vote or value) of the acquir-  
16 ing corporation is held by former  
17 partners of the domestic partnership  
18 or related foreign partnerships (deter-  
19 mined without regard to stock of the  
20 acquiring corporation which is sold in  
21 a public offering related to the trans-  
22 action), and

23 “(III) the acquiring corporation  
24 meets the requirements of subclauses  
25 (I) and (II) of clause (ii).



1 “(iv) SPECIAL RULES.—For purposes  
2 of this subparagraph—

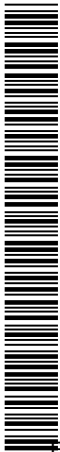
3 “(I) a series of related trans-  
4 actions shall be treated as 1 trans-  
5 action, and

6 “(II) stock held by members of  
7 the expanded affiliated group which  
8 includes the acquiring corporation  
9 shall not be taken into account in de-  
10 termining ownership.

11 “(v) NOMINALLY FOREIGN CORPORA-  
12 TION.—The term ‘nominally foreign cor-  
13 poration’ means any corporation which  
14 would (but for this subparagraph) be treat-  
15 ed as a foreign corporation.

16 “(3) NET REALIZED BUILT-IN GAIN.—The term  
17 ‘net unrealized built-in gain’ means, with respect to  
18 options to acquire stock in any corporation, the  
19 amount which would be required to be included in  
20 gross income were such options exercised.

21 “(4) EXPANDED AFFILIATED GROUP.—The  
22 term ‘expanded affiliated group’ means an affiliated  
23 group (as defined in section 1504(a) without regard  
24 to section 1504(b)).”



1 (b) CLERICAL AMENDMENT.—The table of sections  
2 for such part II is amended by adding at the end the fol-  
3 lowing new item:

“Sec. 91. Certain deferred amounts of insiders of corporations  
which expatriate to avoid United States income  
tax.”

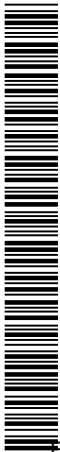
4 (c) EFFECTIVE DATE.—The amendments made by  
5 this section shall apply with respect to corporate expatria-  
6 tion transactions completed after September 11, 2001,  
7 and to taxable years ending after such date.

8 **SEC. 204. GOLDEN PARACHUTE EXCISE TAX TO APPLY TO**  
9 **DEFERRED COMPENSATION PAID BY COR-**  
10 **PORATION AFTER MAJOR DECLINE IN STOCK**  
11 **VALUE OR CORPORATION DECLARES BANK-**  
12 **RUPTCY.**

13 (a) IN GENERAL.—Section 4999 of the Internal Rev-  
14 enue Code of 1986 (relating to golden parachute pay-  
15 ments) is amended by redesignating subsection (c) as sub-  
16 section (d) and by inserting after subsection (b) the fol-  
17 lowing new subsection:

18 “(c) TAX TO APPLY TO DEFERRED COMPENSATION  
19 PAID AFTER MAJOR STOCK VALUE DECLINE OR BANK-  
20 RUPTCY.—

21 “(1) IN GENERAL.—For purposes of this sec-  
22 tion, the term ‘excess parachute payment’ includes  
23 severance pay, and any other payment of deferred  
24 compensation, which is received by a corporate in-



1       sider after the date that the insider ceases to be em-  
2       ployed by the corporation if—

3               “(A) there is at least a 75-percent decline  
4               in the value of the stock in such corporation  
5               during the 1-year period ending on such date,  
6               or

7               “(B) such corporation becomes a debtor in  
8               a title 11 or similar case (as defined in section  
9               368(a)(3)(A)) during the 180-day period begin-  
10              ning 90 days before such date.

11       Such term shall not include any payment from a  
12       qualified employer plan.

13              “(2) CORPORATE INSIDER.—For purposes of  
14       paragraph (1), the term ‘corporate insider’ means,  
15       with respect to a corporation, any individual who is  
16       subject to the requirements of section 16(a) of the  
17       Securities Exchange Act of 1934 with respect to  
18       such corporation.”

19       (b) EFFECTIVE DATE.—The amendment made by  
20       this section shall apply with respect to cessations of em-  
21       ployment after the date of the enactment of this Act.

